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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/308,407 07/08/99 KOCH

R FLA-0012

EXAMINER

IM22/1214

JANE MASSEY LICATA
LAW OFFICES OF JANE MASSEY LICATA
66 E MAIN STREET
MARLTON NJ 08053

MIGGINS, M

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

11
12/14/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/308,407

Applicant(s)
Koch et al.

Examiner
Mike Miggins

Group Art Unit
1772



☒ Responsive to communication(s) filed on 9/25/00

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 9-17 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 9-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

REJECTIONS WITHDRAWN

The 35 USC 112 rejections of record in paper #8, pages 2-3, paragraphs 2-4 have been withdrawn.

REJECTIONS REPEATED

All of the 35 USC 103 rejections of claims 9-17 are repeated for the reasons of record in paper #8, pages 3-8, paragraphs 5-8. Instant claims 16-17 have been amended to recite a moisture absorbing layer which is a layer within a surface encompassed by the sealing area. It is the opinion of the examiner that the invention of Wilking teaches the invention recited in claims 16-17 as described in Wilking, column 5 because, based on the broadest interpretation of the claim language of claims 16-17, the moisture absorbing layer (26, 28) of Wilking is a layer within a surface encompassed by the sealing area.

Applicant has failed to respond to the examiner's statements concerning the arrangement of the specification in paper #8, page 2, paragraph 1.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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2. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 17 recites the limitation "the encompassed layer" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

ANSWER(S) TO APPLICANT(S) ARGUMENTS

Applicant's arguments regarding the 35 USC 112 rejections previously of record in paper #8 have been considered but are moot since the rejections have been withdrawn. Applicant's arguments regarding the 35 USC 103 rejections of claims 9-12 and 14, and 13 and 15 over Wardell in view of Hunt et al. and Wardell in view of Hunt et al. and further in view of Flieger respectively have been carefully considered but are deemed unpersuasive for the following reasons:

(A) In response to applicant's argument that the combination of the references of record is not proper, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

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(B) In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references is found or at least suggested in the references.

© In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

A response to applicant's argument regarding Wilking can be found in the Rejections Repeated section (page 2) of the instant office action.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Miggins whose telephone number is (703) 305-0915. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ellis Robinson, can be reached at (703) 308-2364. FAX communications should be sent to the appropriate FAX number; (703) 305-3599 for After Final Responses only or (703) 305-7718 for all other responses. FAXs received after 4 P.M. will not be processed until the following business day.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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MCM 12/11/00

llcd

Ellis P. Robinson

Ellis Robinson
Supervisory Patent Examiner
Technology Center 1700